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CENTRAL FAX CENTER****OCT 08 2008****FAX TRANSMISSION****DATE:***10/8/08***PTO IDENTIFIER:** Application Number 10/561,622-Conf. #9658
Patent Number**Inventor:** Masaki Hashimoto et al.**MESSAGE TO:** US Patent and Trademark Office**FAX NUMBER:** (571) 273-8300**FROM:** FULBRIGHT & JAWORSKI L.L.P.

C. Andrew Im

PHONE: (212) 318-3359**Attorney Dkt. #:** NY-KIT 404-US (10513311)**PAGES (Including Cover Sheet):***5***CONTENTS:**Response to Restriction Requirement (with Traverse)
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Application No. (if known): 10/561,622

Attorney Docket No.: NY-KIT 404-US

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Response to Restriction Requirement (with Traverse)

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Docket No.: NY-KIT 404-US
(PATENT)

Response to Restriction Requirement (with Traverse)	
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Dated: <u>10/8/08</u>	Signature: <u><i>Fani Malikouzakis</i></u> (Fani Malikouzakis)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Masaki Hashimoto et al.

Application No.: 10/561,622

Confirmation No.: 9658

Filed: November 20, 2005

Art Unit: 3643

For: PLANT CULTIVATING BASE BODY
AND METHOD OF MANUFACTURING
THE SAME

Examiner: S. T. Nguyen

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Restriction Requirement set forth in the Office Action mailed September 9, 2008, applicant hereby provisionally elects Group 1, claims 11-20 for continued examination, with traverse. Please note that original claims 1-10 were canceled and new claims 11-27 were added by a Preliminary Amendment filed on December 20, 2005.

The Examiner has required restriction between claims 1-20 which are drawn to a plant cultivating substrate and claims 21-27 which are drawn to a method of manufacturing a plant cultivating substrate. Applicants respectfully traverse the

Application No.: 10/561,622

Docket No.: NY-KIT 404-US

Examiner's Restriction Requirement on the grounds that all of the claims 11-27 are related and essentially describe plant producing a plant cultivating substrate. It is urged that Groups I and Group II are at best, different embodiments of a single inventive concept for which a single patent should issue. These Groups do not constitute distinct inventions such as to require that their subject matter be prosecuted in separate application. Further, there is no extra burden on the Patent and Trademark Office to examine the allegedly separate invention in a single patent application.

Although the Commissioner may require restriction if two or more independent and distinct inventions are claimed in a single application (37 CFR § 1.142(a)). In the present case, although the claimed subject matter may be classified in different classes, the inventions are not independent. In fact, Group II comprises method claims for producing a plant cultivating substrate, which are essentially equivalent to the plant cultivating substrate claims which are produced by reacting various materials. It is believed that a different classification of the method and apparatus claims does not preclude inclusion of both form of claims in the same application. As stated in the decision of the Board of Appeals in Ex parte McGowan, (64 U.S.P.Q. 429), "...different classification of apparatus ... and a method ... do not appear to be pertinent to the question of division between such similar inventions as are covered by appellant's claims."

If the Examiner is aware of another method to make the product as claimed, using a process which is materially different from that set forth in the restricted claims, applicant respectfully requests the Examiner to substantiate his position in greater detail. Otherwise, it is respectfully requested that the restriction requirement be withdrawn, and that each of claims 11-27 presently pending in this application be examined.

In view of the above comments, it is respectfully requested that the Examiner withdraw the restriction requirement and allow applicants to prosecute the entire

Application No.: 10/561,622

Docket No.: NY-KIT 404-US

application in the present case. In the event the restriction requirement is made final, applicant reserves the right to file one or more divisional applications directed to the non-elected subject matter.

* * *

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0624, under Order No. NY-KIT 404-US (10513311) from which the undersigned is authorized to draw.

Dated: October 8, 2008

Respectfully submitted,

By 

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Registration No.: 40,657

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